CONNAUGHT HOUSING DEVELOPMENT SDN BHD

v.

KERAJAAN MALAYSIA

HIGH COURT MALAYA, PENANG
RK NATHAN J
[CIVIL SUIT NO: 21-23-2001]
16 OCTOBER 2003

REVENUE LAW: *Corporation tax - Notices - Contents of - Compliance with provisions of Act - Income Tax Act 1967 s. 96*

The plaintiff (the Government of Malaysia) had sued the defendant for taxes amounting to RM3,110,035.23 with interest at 8% from the date of the judgment and costs. The plaintiff then took out an application for summary judgment for the said sum with interest and costs. The defendant appealed, the main ground being that the plaintiff had failed to comply with s. 96(4) of the Income Tax Act 1967 ('the Act') in that the place at which payment is to be made was not stated, the penalty for late payment imposed by s. 104(4) of the Act was not stated and finally the notices did not point out to any right of appeal which existed under the Act.

Held: (allowing appeal and setting aside summary judgment)

[1] In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. If there is any ambiguity in the interpretation of the relevant applicable section, then the benefit must be given in favour of the tax-payer. (p 146 g-h)

[2] Furthermore, there was no response from the plaintiff on the defendant's main ground of appeal. (p 148 c)

Case(s) referred to:
Kerajaan Malaysia v. Dato' Hj Ghani Gilong [1995] 3 CLJ 161 FC ***(refd)***
National Land Finance Co-operative Society Ltd v. Director General of Inland Revenue [1993] 4 BLJ 33 SC ***(foll)***

Legislation referred to:
Income Tax Act 1967, ss. 96(4)(c), 103(4), (5A), 106(3), 136(4), 142(1)
Interpretation Act 1967, s. 7

For the Appellant/Defendant - Ramesh Sathasivam (Cheah Sin Chin); M/s Adnan Sundra & Low
For the Respondent/Plaintiff - Ashrina Ramzan Ali, Inland Revenue Board

Reported by Mariette Peters-Goh

JUDGMENT

RK Nathan J:
The Government of Malaysia assessed the defendant's tax for the year 1984 (additional), 1986 (additional), 1991 and 1992 as amounting to RM32,431, RM3,164, RM2,524,887.64 and RM132,188.83 respectively. The plaintiff contended that having assessed the said sums, the required notices for each of the respective years and all dated 15 October 1998, were posted to the defendant, to the last known postal address.

Because the defendant had failed to settle the sums claimed within the required thirty days from the date of receipt of the said notices, the plaintiff added on a further 10% to the amounts already due, pursuant to Sec 103(4) of the Income Tax Act 1967 (the Act). The additional sums thus accrued for the respective years were RM3,243.07 for 1984, RM316.64 for 1986, RM252,488.76 for 1991 and RM13,218.88 for 1992.

Since the defendant had failed to make the said payments within sixty days from the date of such increase he was levied a further fine of 5% pursuant to s. 103(5A) of the Act. The said increases for the respective years were RM1,783.69 for 1984, RM174.02 for 1986, RM138,868.82 for 1991 and RM7,270.38 for 1992. The plaintiff thus sued the defendant for RM3,110,035.23 with interest at 8% from date of judgment and costs. Soon thereafter the plaintiff took out an application for summary judgment for the said sum with interest and costs.

Findings Of The Court
The learned Senior Assistant Registrar having given summary judgment as prayed, the defendant appealed. However the Notice of Appeal filed was late by three days. The defendant then applied by way of encl. 10 for extension of time to file the Notice of Appeal. The reason given for the late filing of the Notice of Appeal by three days was that immediately after the summary judgment having been obtained against him, the defendant changed to the present solicitors and in the course of obtaining the relevant cause papers the defendant was late by three days.

The only objection taken before me by Puan Ashrina for the plaintiff was that, the defendant had no valid defence. Since that was the only objection, I indicated that in order to see if there was any defence I had to allow the application for extension in order to see if there was merit in the appeal. Puan Ashrina then asked for costs which I fixed at RM350.

In *Kerajaan Malaysia v. Dato' Haji Ghani Gilong* [1995] 3 CLJ 161 the Federal Court held that the general words of s. 136 of the Act read together with s. 7 of the Interpretation Act 1967 (Consolidated and Revised 1989) are sufficient to permit the Acting Director General of Income Tax to sign and issue the certificate under s. 142(l) of the Act for and on behalf of the Director General and that a certificate so issued, if valid by reason of that provision, was sufficient evidence of the amount, so due, and constituted sufficient authority to the court to give judgment accordingly. Mr. Ramesh for the appellant conceded to this and also conceded he was not challenging under this provision more so since s. 106(3) of the Act states that in any proceedings under s. 106 which deals with matters relating to recovery by suit, the court shall not entertain any plea that the assessment of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased.

However it was the case of the appellant that since the Act is loaded heavily against the tax-payer therefore the said Act ought to be construed literally. For this proposition he relied upon the then Supreme Court decision in *National Land Finance Co-operative Society Ltd v. Director General of Inland Revenue* [1993] 4 BLJ 33 in which the court said at p. 39 as follows:

> Nevertheless, we should remind ourselves of the principle of strict interpretation as stated by Rowlatt J. in *Cape Brandy Syndicate v. I.R.C. (supra*):
>
> > ... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used ...
> >
> > It has also been said by the Judicial. Committee in *Oriental Bank Corporation v. Wright* [1880] 5 AC 842, 856 "that the intention to impose a charge upon a subject must be shown by clear and unambiguous language.

I agree that if there is any ambiguity in the interpretation of the relevant applicable section, then the benefit must be given in favour of the tax-payer.

Referring to the affidavit in support of the application for summary judgment, Mr. Ramesh referred me to exhibit MR1 which contained the relevant Notices of Assessment for the year 1984 (additional), 1986 (additional), 1991 and 1992.

Notices Not Served

The first issue raised was that these four notices were not served on the appellant since the said notices were addressed, not to the defendant's own address, but care/of Arthur Anderson HRM Tax Services, Penthouse Suite 11-3, Bangunan FOP, Jalan Anson, 10400 Penang. The appellant referred me to s. 96(1) of the Act which reads as follows:

> 96. Notice Of Assessment
>
> (1) As soon as may be after an assessment has been made, the Director General shall cause a notice of assessment to be served on the person in respect of whom the assessment was made.

It was the argument of the sppellant that the said notice ought to have been served on the person of the appellant and not upon his accountants.

Firstly, this issue was not raised in the affidavit to enable the respondent to show that the appellant had indeed informed the respondent to address all correspondence to its accountants. It is the practice of many large corporations or for that matter any one, to write to the Tax Department to serve all necessary notices and papers on its accountants to enable the said accountants to act promptly on tax matters.

Secondly, Puan Ashrina pointed out that in its affidavit (encl. 6) the appellant had indeed admitted receiving the said notices. Once this was pointed out, counsel for the appellant indicated that he was dropping this issue.

Defect In The Notice

Ramesh then argued that the said notices did not comply with s. 96(4)(c) of the Act which reads as follows:

> (4) A notice served under subsection (1) or (2) shall be in the prescribed form and shall indicate, in addition to any other material included therein:
>
> (a) in the case of a notice served under subsection (1), the year of assessment, the amount or additional amount of chargeable income and the tax charged thereon or the amount of the tax or additional tax, as the case may be;
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> (b) in the case of a notice served under subs. (2), the year of assessment and the amount of the increase in the tax charged; and

(c) in either case -

(i) the place at which payment is to be made;

(ii) the penalty for late payment imposed by section 103(4); and

(iii) any right of appeal which may exist under this Act.

Counsel pointed out that there was a total failure to comply with sub-section (c) in that, the place at which payment is to be made was not stated, the penalty for late payment imposed by s. 103(4) of the Act was not stated and finally the notices did not point out to any right of appeal which might exist under the Act.

Unfortunately there was no response to this issue from the respondent and on this score the appellant therefore must succeed.

Breach Of Secion 142(1) of the Act

In this case the certificate issued under s. 142(1) of the Act was signed by one Syed Hamid bin Syed Ahmad, who described himself on the certificate, as the Penolong Pengarah, Lembaga Hasil Dalam Negeri, Malaysia.

Section 142(1) of the Act reads as follows:

> In a suit under section 106 the production of a certificate signed by the Director General giving the name and address of the defendant and the amount of tax due from him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for that amount.

Mr. Ramesh argued that whilst the person signing has described himself as Penolong Pengarah, he ought to have in fact used the words for and on behalf of the Director General, since the Act only authorised the Director General to sign. Puan Ashrina's response was to refer me to s. 136(4) of the Act which has authorised the Senior Assistant and Assistant Director of Inland Revenue to exercise any function of the Director General under the Act, except his functions under ss. 44, 137(1) & 150. Furthermore the earlier cited case of *Kerajaan Malaysia* has sufficiently canvassed this point.

I therefore allowed the appeal with costs and set aside the summary judgment and directed the matter to proceed to trial.